

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6012 of 1997

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K. SREEDHARAN

and

MR.JUSTICE A.R. DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 & 2 : YES, 3 to 5 : NO

BHAIALBHAI VITTHALDAS GANATRAFATHER OF SAMIR B GANATRA

Versus

STATE OF GUJARAT

Appearance:

SUO MOTU for Petitioners

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and

MR.JUSTICE A.R.DAVE

Date of decision: 17/04/98

C.A.V. JUDGMENT (Per : A.R. Dave, J.)

Rule. Service of Rule is waived by Govt.
Pleader Shri P.G.Desai, for the respondents. Looking to
the facts of the case, with consent of the learned
advocates, this petition is finally heard today.

2. Bhailalbhai Vitthaldas Ganatra and others addressed a letter dated 25.7.1997 to the Hon'ble Chief Justice of this Court drawing His Lordship's attention to an unfortunate event which had resulted into death of four persons and injuries to 3 persons in village Keshod on 18.7.97 on account of police firing. It was submitted in the said letter that the signatories to the said letter were friends or relatives of the deceased and as the police had acted in a most atrocious manner while firing at a crowd in Keshod on 18.7.97, they wanted the entire matter to be investigated by this Court as the firing was in violation of human rights of the deceased and injured.

3. The said letter was treated as a writ petition and was numbered as Special Civil Application No. 6012/97. This Court had issued notices to the State of Gujarat, the D.S.P., Junagadh and the Commissioner of Police, Ahmedabad so as to probe into the matter and gather correct information. In pursuance of the notices issued by this Court, an affidavit-in-reply dated 15.9.97 was filed by Shri J.R. Rajput, Under Secretary to the Govt. of Gujarat in Home Department. In the said affidavit it was stated that looking to the gravity of the incident, the State Government had already taken a decision to hold a magisterial inquiry and the District Magistrate, Junagadh was ordered on 4.9.97 to initiate necessary inquiry to find out the circumstances in which the police had resorted to firing and whether the extent of firing resorted to was just and proper. The District Magistrate was also directed to state in his report whether, before resorting to firing, the police had availed other alternative methods like lathi charge or use of tear gas shells. It was also to be stated whether sufficient quantity of tear gas shells was there with the police force and whether tear gas shells were used with due discretion. As per the direction given by the State of Gujarat, the District Magistrate, Junagadh was supposed to submit his report within 30 days from the date of the said order.

4. When the petition was notified before this court on 24.11.97, Learned Advocate Shri Girish Patel was requested by the court to assist the court as amicus curiae and the office of this court was directed to give a set of relevant papers to Shri Girish Patel so that he can look into the matter and can render his assistance to the court.

5. In pursuance of the direction given by the State

of Gujarat on 4.9.97, Addl. District Magistrate, Junagadh District, Shri S.K. Langa has placed on record his report. A copy of the said report has been given to Ld. Advocate Shri Girish Patel as directed by this court earlier.

6. The incident which resulted into 4 deaths and bullet injuries to 3 persons had taken place in the following circumstances:- A statue of late Dr. Baba Saheb Ambedkar was desecrated and therefore some riots had taken place in the state of Maharashtra and as a result thereof about 10 persons belonging to the scheduled castes were killed. Repercussions of the said incident had also taken place at several places in the country. One such incident had taken place in village Keshod in Dist. Junagadh on 18.7.97. Facts with regard to the said incident as incorporated in the report submitted by the Addl. District Magistrate are as under:-

7. A call of 'bandh' was given by the Dalit Samaj in the State of Gujarat on 16.7.97. On the said day, in Keshod, some members of the scheduled castes had proceeded to give a memorandum to the Mamatdar, Keshod. After submitting the memorandum, when the mob was returning, the mob had become furious and had damaged properties of certain merchants and, therefore, a complaint was filed by Shri Jagdishbhai Naranbhai Patel, resident of Keshod, which was registered as C.R. No. I-146/97 alleging commission of offences under provisions of sections 143, 427, 451, 336 and 188 of the I.P.C. and sec. 135 of the Bombay Police Act. In pursuance of the abovereferred to incident, 2 members of the said mob belonging to a scheduled caste were arrested on the spot whereas 13 persons were arrested subsequently. Because of the said incident, the Pan-Bidi Association of Keshod had given a call for 'bandh' on 18.7.97. Merchants who belonged to upper castes had abstained from doing business and had kept their shops closed on that day. In the said connection a rally was organized in Keshod though a ban was imposed on such a rally or procession by the Govt. authorities. A mob of 500 to 700 persons had assembled near Sharda Chowk at Keshod around 8'o clock on 18.7.97. Some politicians had taken lead and certain provocative speeches were delivered in spite of the fact that the police officers on duty as well as the Executive Magistrate, Keshod had made several requests to the leaders and members of the assembly to disperse and not to have a rally. In violation of instructions given by the police officers and the Executive Magistrate, Keshod, members of the assembly had started shouting slogans

against late Dr. Ambedkar and other persons. Gradually, more and more persons joined the rally and when they were requested by the police to disperse and stop shouting, members of the assembly started pelting stones at the police and they also wanted to uproot a statute of Dr. Ambedkar. Several slogans instigating members of the assembly were being shouted. The assembly was out of control and the members of the assembly had put fire to a shop belonging to harijan Gogambhai Munjabhai Sonarva situated at Char Chowk where Shri Sonarva was having a cabin and was doing business of maintaining a telephone booth enabling people to use the telephone for local as well as STD calls. An effort was also made by the crowd to take life of Kalabhai Khimabhai by setting him ablaze alive.

8. In the abovereferred to circumstances, after some time, when the assembly had become absolutely unruly, firing had to be resorted to by the police authority and as a result of the said firing, 4 persons lost their lives and 3 persons were injured.

9. In view of the abovereferred circumstances, the letter dated 25.7.97 was addressed to the Hon'ble Chief Justice and with assistance of advocate Shri Girish Patel, the matter was heard by this court.

10. During pendency of the petition we have received the report submitted by Shri S.K. Langa, Addl. District Magistrate, Dist. Junagadh which gives details about the circumstances in which the entire incident had taken place and the circumstances in which the police officers were constrained to open fire at the mob which had become so unruly that lathi charge and firing of tear gas shells had failed to control the unruly mob.

11. We have heard Learned Advocate Shri Girish Patel who has submitted that the incident in question had resulted into deaths of 4 persons and injuries to 3 persons. It has been submitted by Shri Patel that the police ought not to have resorted to firing as it was possible for the police officers to control the assembly before it became unruly. It has been submitted by him that had the police remained more vigilant and active, they could have controlled the mob around 8 a.m. on 18.7.97 when there were hardly 500 to 700 persons in the mob. It has been submitted by him that the police personnel were conscious of the fact that the mob was likely to become unruly and was likely to create some difficulties or problems and yet they miserably failed in controlling the said mob right from the beginning.

12. He has thereafter submitted that the police had exceeded its authority while using the force and while resorting to firing. It has been submitted by him that Police Manual and provisions of sections 129 and 130 of the Criminal Procedure Code deal with the manner in which preventive measures are to be taken by the police authorities for the purpose of dispersal of assembly by use of civil force and with use of armed forces. The manner in which firing is to be resorted to is also stated in rule 60 of Vol. 3 of Police Manual. It has been submitted by Shri Patel that the above-referred provisions of the Cr.P.C. and Police Manual were not strictly followed by the police personnel and therefore the concerned policemen should be held liable for the atrocious police firing. He has submitted that the persons who lost their lives were hit by bullets on the upper half of their bodies. It has been submitted by Shri Patel that normally, whenever firing is resorted to, an effort is made to prevent the mob from becoming unruly and to disperse the mob. Intention of the police should never be to kill members of the mob. In the instant case, Ld. Advocate Shri Patel has submitted that instead of resorting to firing in the manner prescribed by the Police Manual, the concerned policemen had made a positive effort to kill members of the mob by aiming upper portion of their bodies. Ld. Advocate Shri Patel has submitted that the police ought not to have resorted to firing and even if it had become a must, they ought to have aimed lower limbs i.e. legs or feet of the members of the mob but instead of doing so, an effort was made to kill members of the mob or the police had acted in an absolutely rash and irresponsible manner.

13. In the above referred to circumstances, Shri Patel has prayed that the entire incident should be inquired into by an independent judicial officer. He has submitted that an inquiry, if made by a judicial officer, would be absolutely impartial and would not do any favour to any miscreant.

14. It has also been submitted by Shri Patel that even the report of the Addl. District Magistrate reveals that force used by the police while controlling the unruly mob was in excess of what was actually required and relevant provisions of the Police Manual were not strictly followed.

15. Shri Patel has concluded with a prayer that some guidelines should be provided by this court so as to see that such an untoward incident is not repeated in future.

He has submitted that there are several other methods to control unruly mobs and instead of resorting to firing the police personnel should have used other methods. It was also suggested by him that the State of Gujarat should think of having some alternative method to control unruly mobs so that the police might not be constrained to resort to firing which normally takes lives of several persons. It was clarified by Shri Patel that it was not his prayer to direct any inquiry under provisions of Commission of Inquiry Act, 1952.

16. We have heard Learned Govt. Pleader Shri P.G. Desai and have also perused the report submitted by the Addl. District Magistrate, District Junagadh. After hearing Shri Desai and upon perusal of the report submitted by the Addl. District Magistrate, District Junagadh, the following facts emerge.

17. No permission was granted to convene any meeting or to have a rally or a procession in Keshod on 18.7.97. On the contrary, rallies and processions had been banned by the police authorities and in spite of the said fact, around 500 to 700 persons had gathered near Sharda Chowk on 18.7.97. Speeches were delivered by politicians so as to instigate people present at Sharda Chowk. The leaders and members of the assembly wanted to submit a memorandum to the Mamlatdar, Keshod and, therefore, it was decided by them to proceed towards the office of the Mamlatdar. As organizing rally or procession was banned, the concerned Police Inspector and the Executive Magistrate, Keshod, had repeatedly requested the persons present there not to organise rally but ignoring the instructions given by the said officers, the rally was formed and gradually more and more people had joined the said rally. Ultimately, when the rally had proceeded towards the Cloth Market, Ambawadi, Raj Cinema, and Station Road, the strength of the rally had increased to approximately 7000. When the rally had reached Char Chowk, members of the mob or the rally started raising slogans against late Dr. Ambedkar and started throwing stones at a statute of late Dr. Ambedkar. Within some time the mob became violent and made an attempt to damage Siddharth STD PCO and ultimately the said cabin/shop named Siddharth STD PCO was set on fire and also an effort was made to set on fire Shri Kalabhai Khimabhai. In the above referred to circumstances, several warnings were given by the police personnel present there and by the Executive Magistrate, Keshod but as the said warnings had not resulted into dispersal of the mob, the police had to resort to lathi charge. In spite of sufficient warnings and lathi charge when the mob had not dispersed, around 9.45 a.m. tear

gas shells had to be fired after giving sufficient warning. As a result of firing of the tear gas shells, the mob had become more unruly and had started pelting stones at police personnel who were on duty. In the above referred to circumstances, the police had given sufficient warnings to members of the unlawful assembly and as the mob took no heed to the warnings, the police had resorted to firing in air upon orders given by the Executive Magistrate, Keshod who was personally present. As firing in air proved to be ineffective, the police personnel had fired at the members of the mob so as to see that the mob is dispersed and ultimately the incident with regard to the police firing had taken place.

18. It has been stated by the Addl. District Magistrate in his report that due efforts were made by the concerned police personnel and the Executive Magistrate to see that the unlawful assembly is dispersed. Sufficient warnings were given, lathi charge was resorted to and tear gas shells were fired. Before having effective firing, a few rounds were fired in air and as all the above referred to measures miserably failed, the police had to resort to firing which ultimately resulted into deaths of 4 persons and injury to 3 persons.

19. In the report it has been submitted by the Addl. District Magistrate that while resorting to the firing certain provisions mentioned in Gujarat Police Manual Vol. 3 were not strictly followed by the police personnel and therefore he has come to the conclusion that some irregularities were committed at the time when the firing was resorted to. However, looking to the overall situation prevailing at the relevant time, the Addl. District Magistrate has come to a positive finding that it was absolutely necessary to resort to firing so as to control and disperse the violent mob and, therefore, firing was duly justified.

20. It has been also suggested by the Addl. District Magistrate in his report that our armed police force should be given due training so as to see that firing can be resorted to without resulting into loss of human lives. Even Ld. Advocate Shri Girish Patel has also submitted that the police authorities and the State of Gujarat should have devices which would help the police personnel in controlling violent mobs without causing death of any member of the unlawful assembly.

21. We have carefully gone through the report and we are also of the view that perhaps after hearing most

provocative speeches delivered by the politicians, the mob had become violent and had made efforts to set fire to a cabin/shop and a human being. The incident took a violent turn within a very short time. The entire crowd was proceeding towards the office of the Mamlatdar for the purpose of submitting a memorandum but all of a sudden they became violent and perhaps it was not possible for the police personnel present there to control the mob without resorting to firing. In the circumstances, we are also *prima facie* of the view that the police was justified in resorting to firing.

22. Learned Govt. Pleader Shri P.G. Desai appearing for the State has submitted that the Collector, Junagadh has sent a proposal to the State of Gujarat for giving compensation to heirs of the deceased. It has been suggested by the Collector that legal heirs of each deceased should be given a sum of Rs. 1 lakh - Rs. 50000/- ex-gratia from the Chief Minister's Funds and a further sum of Rs. 50000/should be paid as special payment. Moreover, it has also been suggested that some amount should be paid to the persons who were injured as a result of the police firing. It has been submitted by Shri Desai that the abovereferred proposals are pending with the State Government and no final decision has been taken on the said proposals.

23. We wanted to know from Ld. Govt. Pleader Shri Desai whether the respondent government had taken any action on the report received from the Addl. District Magistrate. It has been submitted by Shri Desai that as the report was submitted very recently and as the petition is pending before this Court, no concrete action has been taken by the respondent government on the basis of the report submitted by the Addl. District Magistrate. It has been submitted by Shri Desai that the respondent Government shall look into the matter and take some positive action so that in future such an untoward incident does not take place.

24. Looking to the facts and circumstances of the case, we do not feel that any judicial inquiry should be ordered in the instant case. The purpose of giving direction for holding a judicial inquiry is to gather necessary facts and to find out the persons who are responsible for the incident. In the instant case, a comprehensive report has been given by the Addl. District Magistrate, Dist. Junagadh wherein he has given complete details with regard to the incident and has also come to a particular conclusion. It is now for the State of Gujarat to take appropriate actions on the basis of

the said report. As all relevant facts have been duly highlighted in the said report, we do not think it necessary to appoint another commission to make further or another inquiry. Giving direction for holding another inquiry would amount to waste of public money. We are however sure that the respondent government will look into the report and shall give appropriate direction to the concerned authorities so that such an untoward incident may not be repeated in future. We are sure that the government shall also try to find out some modern method to control violent mobs which would not result into somebody's death.

25. Learned Advocate Shri Girish Patel was appointed by this Court as amicus curiae by an order dated 24.11.97. We appreciate the assistance rendered by Shri Patel in this matter of a public cause.

26. In view of the facts stated hereinabove and in view of the report submitted by the Addl. District Magistrate on 16.2.98, we do not think that this Court should interfere in the matter. We are however sure that the respondent government would look into the matter and take appropriate measures in pursuance of the report submitted by the Additional District Magistrate, Junagadh. With regard to the amount of compensation to be paid to the heirs of the deceased and those who are injured, we direct the Government to take an appropriate decision about the quantum of compensation to be paid to the concerned persons in pursuance of the proposal made by the Collector, Junagadh within a period of four weeks from the date of receipt of a copy of this judgment by the Government. Rule is made absolute to the above extent only with no order as to costs.

(K. Sreedharan, C.J.)

(A.R. Dave, J.)

Prakash*